Towards an integrated criminal policy

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1. Problem definition

The Pinkster Plan (5 June 1990) and Contract with the Citizen (1992) represent policy initiatives on the part of the federal government in the areas of public security and justice. This research project examines the extent to which these policy initiatives exhibit internal and mutual coherence and how they are being implemented in practice in the sectors of police, public security and justice. The focal point is the implementation of a "policy in action", which gained sudden and increasing momentum in the wake of the Dutroux case and other related cases.

The points of departure for this research concern the multiple objectives present in criminal policy, namely the instrumental, intrinsic and organizational objectives (Denkers, 1976). How are the official policy objectives (the so-called "stated goals") translated into real policy (the so-called "real goals")? Key here is the flow of communication from the federal to the local level. The central idea behind this research was that in addition to formal objectives there are also many informal and sometimes opposing objectives formulated by various actors. All of which stands in the way of an unambiguous implementation of policy. The analysis of policy flow was done in two selected settings, namely Antwerp and Malines. The reader is referred to the research report for more details concerning the empirical research.

This research consists of three parts:

1. Concerning **the police**, the analysis of policy measures begins with the so-called "reflection document" drawn up by the Department of the Interior in 1995 in which a thorough collaboration among the various police services was announced. Then policy in the areas of the "inter-police zones", the "Pentagonal Consultation" (cf. “vijfhoeksoverleg”) and the public security charters was investigated. In the further analysis of the policy flow and practical policy implementation, only initiatives designed to improve urban security, namely the methods of handling youth violence and prostitution, are examined. Here the emphasis is upon the possibility of an integrated policy among the police, municipal authorities and the judicial actors concerning objectives, organization and implementation of tasks.
2. Concerning **penality** the legal initiatives proposed in the Contract with the Citizen, namely summary proceedings (accelerated justice), community service order and mediation in criminal cases are examined with respect to their legal coherence and analysed with respect to their local application in practice.
3. A third part of the research concerns a **the perception and appreciation by the citizen of public security policy.**

The various parts of the research are based on **six questions**:

1. How is the internal coherence of the policy measures within the various departments?
2. Are fundamental legal principles sufficiently taken into account?

3. Which aspects or specific problems on the field inhibit an efficient implementation of these measures in practice?
4. Are both penal and police policy sufficiently in tune with each other?
5. Do the different initiatives improve the integration of vulnerable groups?
6. Do these measures succeed in increasing the citizens' trust in the police and the penal system?

2. Research results

This summary gives the most striking results of the research.

2.1. Internal coherence

The new initiatives designed to better tune and co-ordinate the areas of public security, police and penality ran into many problems. Concerning the police, the lack of tradition and the preference given to the parties' own interests (local police and the national police) inhibited collaboration in the field. New or further developed federally supported offices (General Office for the Support of the Police (cf. “Algemene Politiesteundienst”), a Standing Secretary for Crime Prevention Policy (cf. “Vast Secretariaat voor Preventiebeleid”), the General State Police (cf. “Algemene Rijkspolitie”)) did not meet expectations, due to the lack of trust present in some of these offices and also due to the limited means available for actual support in the field. Initiatives to prepare and evaluate criminal justice policy also had problems getting started. In the area of penal policy the new services such as the Alternative Measures Service(cf. “Steundienst Alternatieve Maatregelen”), the Service of Judicial Policy (cf. “Dienst Strafrechtelijk Beleid”) and the National Institute for Criminalistics and Criminology (cf. “Nationaal Instituut voor Criminalistiek en Criminologie”) did not succeed very well in preparing and evaluating. In addition, the legislative work with respect to the penal initiatives demonstrates a lack of coherence.

Coherence is dependent from the motivation in the field to achieve harmony. The penal culture of independence that is strongly ingrained in the legal profession and the judicial organization, and the historically rooted distinction between investigation, prosecution, sentencing and the execution of punishment, also leads to fragmentation. Opposed to this is the fact that independence and division of powers are essential foundations to the constitutional state.

Concerning penality, the application of the summoning by report (cf. “oproeping bij proces-verbaal”) is an interesting illustration of a policy lacking internal coherence. The implementation of alternative sanctions is also plagued by a complex structure of subsidies and administration. The implementation of the local police and public security policy is inhibited by internal fragmentation arising from differing visions concerning the policy to be implemented and the lack of attention to this fact with the policy makers (e.g. at the Pentagonal Consultation).

2.2. Fundamental legal principles

In mediation we point to the shift of the decision making of the criminal judge to the public prosecutor in mediation. Moreover, the magistrate is here both prosecutor and judge. The

proceeding of immediate appearance (cf. summary proceedings) raises questions on the very short period allocated to the legal process.

Concerning legal protection, the accountability of the police and other authorities is also important. Yet there are few policy initiatives to be seen at the federal level (e.g. input from the legislative authorities) and at the local level (city council, local residents, etc.) that use these objectives as starting point or as goals.

2.3. Which aspects or problems in the field inhibit an efficient implementation of policy?

Belgium has little in the way of tradition concerning paying attention to *implementation* of policy, or stated differently, in the creation of the conditions that allow policy to be effectively implemented. These conditions concern investment in the organizational aspects, such as personnel and means, but also concern the flow of information, the creation of channels of communication, investments in cultural changes, etc. Negligence in all of these areas results in the officially proclaimed policy undergoing significant changes (sometimes 'deformities') leading to a growing gap between the so-called *stated* and *real* goals. Ambiguous, contradictory (e.g. repression versus assistance and legal protection versus maintaining the public order) or symbolic goals are thus almost doomed to become disparate practices. Those responsible for implementing policy must not only *be able* to implement it (cf. means, personnel) but they must also *know* what is expected of them (cf. information, know how) and must *want* to implement the policy (cf. personal convictions, hidden agendas).

We note that policy makers quite often start from an instrumental point of view on policy and legislation, and take (too) little account of what is happening in the field. Aspects of an organization that are difficult to quantify and thus that are somewhat intangible, such as the penal or police culture, are insufficiently taken into account in policy measures. This of course is also due to the top down approach used.

Many of the problems noted at the level of both penal and public security policy can be traced back to poor communication and to the fact that preference is given to organizational goals. Conflicting administrative and professional cultures, internal and external compartmentalization and the lack of attention to the development of common visions among the actors often are responsible for the difficulties encountered.

2.4. External coherence or the attuning of the police with the judicial system

Cultural contrasts and conflicts with respect to vision on policy are especially present *between* the police and the penal system. Historically rooted attitudes are also important here. After all, there is no tradition of collaboration between the two policy domains. There is the difference between the penal culture, which highly values (or should highly value) intrinsic goals such as the rights of the defendant and due process, and the police culture that has developed its own point of view concerning law and order and public safety, and with respect to which the above mentioned principles appear to "stand in the way". This leads to a conflict between the instrumental and intrinsic objectives.

The application of summary proceedings again provides an interesting illustration of a lack of collaboration between the police and the penal department. In the settings researched, there appear to be few direct contacts between the police and the prosecutor concerning the procedure for and the application of summary proceedings. Inter-organizational problems

with the police and the prosecution hinder a coherent gearing to one another. Recent reorganizations of the public prosecution, however, will probably improve the communication flow.

2.5. Inclusion versus exclusion of vulnerable groups?

Judicial intervention has an excluding effect in most cases. Yet gradations can be distinguished. Prison sentences, after all, have a more absolutely excluding effect on the criminal and the social environment of the offender than an alternative measure.
We note that with respect to summary proceedings, it is mostly the lighter forms of criminality that are handled, while in general prison sentences are still often imposed. Moreover, the question arises as to whether cases handled via summary proceedings would not be better put into mediation. This again brings us to the problem of the lack of coherence.

Measures such as community service order or mediation are not (often) applied to the real problematic groups in society such as immigrant youth or groups in a "socially vulnerable position". Probation, which is primarily aiming to assist or integrate in stead of punish, is perhaps intended most especially for this target group. Research with magistrates shows however that judges carefully select the candidates for community service order - the so-called "safe" criminals. Consequently this alternative sanction is mainly imposed on well socially integrated offenders.

Globally it is noted that the most vulnerable group is the most likely to end up in prison (often initially in the form of remand custody), which usually reinforces its spiral downwards. The penal reaction is often the result of their situation of social vulnerability. Belgium does not escape these actuarial tendencies, which means that certain *groups* in society, perceived as problematic, are systematically targeted by the penal system. Summary proceedings are clearly intended for street criminals and hooligans. Criminal justice policies explicitly target at certain “problematic” neighbourhoods which, no doubt unintentionally, tend to result in a further stigmatisation and negative image for the neighbourhood. Social intervention is too often situated within discussions of crime prevention and, in order to be eligible for subsidies, located in the context of combating crime.

2.6. Increasing the trust of the public

Many of the measures discussed were taken to increase the legitimacy of the authorities. The question arises whether increasing legitimacy works in this way. To know whether the signals have been received and understood by the citizen, perception and evaluation of criminal justice policy by the public is the central focus of the third component of this investigation. However, we note that *the* citizen is a fictitious notion. Problems are not always perceived and defined by the citizen in the same way as by policy makers (cf. the interpretation of problems concerning insecurity versus more general social problems). In addition, the question arises concerning to what extent *the* opinion of the public can be known. Is there such a thing? Or is it the opinion of those groups with the loudest voice?

In our research we distinguish at least two types of citizen: the *active* more positively inclined citizen who nevertheless often loses his or her way in the maze of organizations and initiatives and the *passive*, complaining, often negatively inclined citizen who is easily influenced by rightist ideas. After all, who is this community? Here many different types of socio-demographic characteristics play a role: young - old, Belgian - immigrant, well educated -

poorly educated. The pressure upon the federal authorities is great to respond to the demands of the citizen in order to (re)gain political credibility. In its communication with the citizen, however, the authorities all too often degenerate into a simplistic, authoritarian attitude (cf. *hearings* in which policy is communicated to the citizen instead of taking effective account of their complaints and opinions).

It can be concluded that the approach to problems in the neighbourhood not only requires a different police and penal policy but also requires a change in municipal policy. Here not only the problem of an integrated policy on public security arises but also the problem of an integrated municipal policy. In the end, *community policing (or community justice)* cannot succeed without a community policy. This is what makes policy so 'complex, pluralistic and layered', but above all what makes it very difficult to realize.

We see that recently penal policy has been strongly determined by the pressure to increase the trust of the public in "justice", to close the gap between penality and the citizen. It is indisputable that penal policy in recent years has taken shape under strong pressure from the outside world and that this has led to a policy driven by incidents. There is an inarguable pressure from the extreme right, who uses these themes in a populist manner, is not irrelevant. A quicker form of justice with attention being paid to the victim and reparation – be it to the victim, be it symbolically to society – are then the most professed official objectives. However, the question arises concerning to what extent these objectives are and can be realized in the field. The message is given that law and order helps. Of course this is a (very) simplistic presentation of the facts, which can even have an opposite effect as the disappointment by the public is that much greater. After all, measures taken in the area of penality are not very (directly) visible. Focussing on scandals, the media contribute to installing a fundamental distrust with respect to the judicial system. The judicial system is presented very selectively in the media and as a result is not well understood by the people.

The most overt answer to the issue of distrust on the part of the citizen is the establishment of "Justice Houses" (cf. "Justitiehuizen"). They symbolize an accessible and humane system of justice, close to the citizen seeking justice. The new alternative measures also have as goal reparation to the victim and/or to society. At the same time we see in the use of mediation that the victim is often absent and that measures directed at the offender still constitute a substantial part of the interventions. In any case, the transition from a crime- and offender-oriented system to a victim-oriented system, as so presented in official discussions, is not yet a fact.

3. Conclusion. Towards an integrated policy on crime

3.1. Integration requires the recognition of diversity within the administration of criminal justice

A plurality of objectives can be found in every organization. However, the complexity of crime policy is increased on the one hand by the diversity located within the various parts of the administration of criminal justice and on the other hand by the need to work together with agencies outside the penal system.

Yet it seems to us undesirable to view this diversity within a purely instrumental vision only as a problem. In the vision of the criminal justice system within *a constitutional state*, it is

essential that the police and the penal system do not strive for the same objectives: protection of the rights of the citizen requires precisely that they have different tasks and that the decisions taken by each instance be controlled by the other, which can mean that earlier taken decisions are overturned. The arresting of a suspect by the police is a good illustration of this (cf. prosecution or requesting pre-trial detention – arrest by the examining magistrate – monitoring by the examining courts – judgement by the sentencing magistrate – execution of the sentence by the administration). Yet in practice a large amount of the frustration in the field is located precisely here because the lack of confirmation of a decision or act by the subsequent body gives the impression that one has worked "for nothing". The solution to this problem is not simple. An increase in communication between the successive bodies is necessary here, so that the reasons for (not) taking certain decisions can be discussed. The results of the "Pentagonal Consultation" show that this process proceeds slowly. The example of summary proceedings in Brussels demonstrates that structurally built in consultation is the only way to achieve more understanding and less frustration.

3.2. Integration requires the recognition of diversity outside the administration of criminal justice

Penal policies and policies concerning public security can also no longer be considered without taking into account collaboration with various non-judicial agencies. The right to security that each citizen enjoys is only a part of a right to well being for that citizen. Local policy on public security must therefore suit in a frame work of wider local municipal policies in which the police and penality – also according to the principle of the *subsidiarity* of criminal law – have only a subordinate and very specific place. A penal policy that believes in the added value of providing assistance must also respect the uniqueness of such assistance.

The recognition of each other's respective competences is essential here. In the political discussions of public security in recent years the subsidiarity of action taken with respect to crime has sometimes been neglected. We can also see illustrations of this in the field. The police are called upon to deal with broader neighbourhood problems. For local initiatives it is easier to find financial support when their goal is the crime prevention. In their collaboration with judicial agencies, social workers are pressed into an increasingly monitoring function. The "*pénalisation du social*" which our French speaking colleagues have already pointed out, is a real phenomenon. A clear political choice between a mere "security state" and a "welfare state" imposes itself.

The integration of non-judicial agencies into crime policy thus does not mean that every instance should strive for the same objectives, but rather that the value of diversity should be recognized. Yet this needs to be combined with better channels of communication and clearer agreements concerning the assignment of tasks. The justice houses can be seen here as an attempt to make possible improved structural and organizational collaboration between certain judicial and para-judicial services. However, here one runs the risk that due to the geographical separation of these para-judicial services from the courts, communication with the magistrates - essential for example to the broader application of alternative sanctions - itself is made more difficult.

3.3. Winning back the trust of "the" people

In policy discussions, reference is eagerly made to "*community policing*" and gradually also to "*community justice*" (cfr. justice houses). However, it is seldom indicated who exactly this

"*community*" is. Even though "the people" are depicted as a single monolithic whole, experience in other countries shows that such a policy too quickly leads to a dualism: winning back the trust then refers especially to the citizens from the middle class neighbourhoods with few problems, while the problematic or neglected neighbourhoods are tackled by means of "justice antennas", "*night courts*" and "*zero tolerance*".

In the area of local public security policy, our research shows that "the" citizen as such does not exist. The active citizens take initiatives themselves to tackle situations in the neighbourhood. All too often, however, measures are taken by the authorities that do not take into consideration existing initiatives from the local residents and which are at odds with the new measures. This does nothing to improve the efficiency or the credibility of local policy. More effort is needed to enter into a genuine dialogue with these citizens.

Finally, in the context of an integral policy, we point to the role of the regional authorities (cf. Flanders and Walloon) and the importance of collaboration with the federal authorities. The positive side of this is, for example, the collaboration agreement between the federal state and the regional authorities concerning the guidance and treatment of sexual offenders. In contrast to this is the development that public security is guided too much at the federal level (cf. the direction by the department of justice of the public security plan).

3.4. Critical evaluations of an integrated criminal policy

In addition to better communication between all parties concerned, an integrated policy also requires critical evaluation. This can be done by specially appointed bodies within the system or by outsiders, for example, scientific research at university level.

Neither of these possibilities is able to call upon a long tradition in Belgium. Evaluations within the system are introduced with, for example, the establishment of mediation advisers ("bemiddelingsadviseurs") to evaluate the mediation or the Committee P. for the police. The history of these two bodies teaches us that it is only with difficulty that they are able to make a place for themselves within the system and that their critical evaluations are not always welcome. Furthermore, the specific position of mediation advisor, which was especially interesting for the analysis and evaluation of mediation policy, is cancelled since 1999.

The establishment of various agencies in support of policy are all interesting initiatives in themselves. Yet, we must note that these agencies tend to function in isolation and do not always receive the means needed to exercise effective power. Furthermore, there is no integration between these agencies while they deal with adjacent areas. One recent positive development is the establishment of a Discussion Platform for Justice and Public Security whose objectives include a better fine-tuning of scientific research in support of policy.

Yet our present research also shows that a search of conscience is also necessary with respect to criminological research. Our research to the perception and evaluation of policy by the public shows that the emphasis upon problems of public security, not only by policy makers but also by criminological investigation, is experienced as a further stigmatisation of certain neighbourhoods. Pointing out the positive aspects in society also is important in such research.